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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EARL STANLEY POLK,

Defendant and Appellant.

B208905

(Los Angeles County
Super. Ct. No. PA060607)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Harvey Giss, Judge. Affirmed.

Kathleen M. Redmond, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Earl Stanley Polk appeals from the judgment entered following his no contest plea to second degree robbery (Pen. Code, § 211) and his admission that he suffered a prior conviction of a serious or violent felony within the meaning of the “Three Strikes” law (Pen. Code, §§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i)) and within the meaning of Penal Code section 667, subdivision (a)(1). Pursuant to his negotiated plea, one count of petty theft with a prior (Pen. Code, §§ 666/484, subd. (a)) was dismissed and he was sentenced to prison for 11 years, consisting of the middle term of three years, doubled by reason of his prior strike conviction, plus five years pursuant to Penal Code section 667, subdivision (a)(1).

Pursuant to the prosecution’s motion, a new case, case number PA060722, was dismissed and probation in another matter was terminated. Appellant was ordered to pay a restitution fine of \$2,200, a penalty assessment of \$20, a D.N.A. assessment of \$20, and a parole revocation fine in the amount of \$2,200, which fine was stayed pending successful completion of parole. Appellant was given 136 days of credit for actual days in custody plus 15 percent conduct credit for a total of 157 days. Appellant waived his right to be present at a restitution hearing.

According to the probation report, on December 21, 2007, appellant stole food items and liquor from a Ralph’s market. When the store manager attempted to contact appellant, appellant began swinging the bags of merchandise, attempting to hit the manager.

After review of the record, appellant’s court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On January 29, 2009, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider.

On February 20, 2009, he filed a letter requesting this court reconsider his 11-year sentence since he is in declining health and his prior unlawfulness has stopped. He asserted he was only attempting to steal nine half-gallon bottles of vodka. He was inside the store when he dropped one bag, left the store because employees were shouting at

him, and dropped two bags in the parking lot. He did not intend to hit anyone with a bag and waited to be caught by the police. He asserted he would be a burden to the state prison system due to his health issues. Having pled no contest to the charge and agreed to the sentence as part of his negotiated plea, appellant is precluded from raising these claims on appeal. (See *People v. DeVaughn* (1977) 18 Cal.3d 889, 895-896; *People v. Pinon* (1979) 96 Cal.App.3d 904, 909-910.)

On March 2, 2009, he filed an additional letter stating that enhancements are properly stayed for prior serious felony convictions not brought and tried separately, citing *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1128 as authority. *Gonzalez* is not applicable in this case as it relates to the imposition of punishment for firearm enhancements pursuant to Penal Code section 12022.53.

We have examined the entire record and are satisfied that no arguable issues exist and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.